IN THE HIGH COURT OF DELHI

CRL.M.C.No. 2558/2004

Hardeep Singh & Ors. ..... Petitioners
! through: Mr. Dinesh Mathur, Sr. Advocate with
Mr. Sushil Bajaj, Mr. H.S.Chandhoke and Mr. Shiv Sapra, Advocates.

VERSUS

$ Food Inspector, Department of PFA & Ors. ..... Respondents
^ through: Mr. Pawan Sharma, Advocate

RESERVED ON: 20.09.2007

% DATE OF DECISION: 09.10.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Petitioners, Directors of the company M/s. Cargill India Ltd., impleaded as accused Nos. 4, 5 and 6 in a complaint filed by the respondent No. 1 under Section 7 read with Section 16 of the Prevention of Food Adulteration Act 1954 seek quashing of the complaint as also the summoning order dated 27.8.2003.

2. The brief facts of the case are as follows:-

A. On 15.2.2002 at about 6.30 P.M. the complainant, a food inspector visited the premises of 'M/s. Sharma Shud Ghee Bhandar' sole proprietory firm of Sh. Kaushal Kumar Sharma. He purchased a sample of 'Refined Soyabean Vegetable Oil', a food article. 'M/s. Sharma Shud Ghee Bhandar' was found stocking and exhibiting for sale the said food article.

B. The sample consisted of 3 x 1 ltr. of 'Refined Soyabean Vegetable Oil'. The sample was divided into 3 equal portions and each separate portion was independently packed, fastened and sealed as per the PFA Act and Rules in the presence of Kaushal Kumar Sharma and a witness Ranjit Singh.

C. One of the sealed portion of sample along with the copy of Form VII was sent separately to public analyst on 18.2.2002. The remaining two sealed portions and copies of Form VII were sent to the local health authority, Delhi on the same day as per the relevant provisions of the PFA Act and Rules.

D. The report of the public analyst dated 6.3.2002 revealed that sample bears statements like '*Is good to your heart*'; '*Helps to lower risks of heart decease and may even prevent cancer*'. The public analyst opined that the said statements are exaggeration of the quality of the product and

thus the sample in question is misbranded. He, however, opined that the oil conformed to the standard.

E. Investigations revealed that vendor 'M/s. Sharma Shud Ghee Bhandar' had purchased the sampled commodity from M/s. Goyal Brothers which was a proprietorship concern of Sh. Vinod Goyal. That M/s. Goyal Brothers had purchased the sampled commodity from the company M/s. Cargill India Ltd. and that the said company was marketer of the sampled commodity. That M/s. Cargill India Ltd. had purchased the sampled commodity from the company Malwa Vanaspati and Chemical Co. Ltd. which was the manufacturer of the sampled commodity.

F. Since the PFA Act fastens criminal liability on the vendor, supplier, distributor/marketer and manufacturer, the food inspector i.e. respondent No. 1 herein filed a complaint under Section 7 read with Section 16 of the PFA Act against under noted persons:-

S. No.	Name	Designation	Description in the complaint	Description in the petition
1.	Kaushal Kumar Sharma	Proprietor of M/s. Sharma Shud Ghee Bhandar/ Vendor	Accused No. 1	Respondent No. 2
2.	Vinod Goyal	Proprietor of M/s Goyal Brothers/ Supplier	Accused No. 2	Respondent No. 3

3.	M/s. Cargill India Ltd.	Marketing Firm	Accused No. 3	Respondent No. 4
4.	Hardeep Singh	Director of Accused No. 3	Accused No. 4	Petitioner No. 1
5.	Sidhant Khosla	Director of Accused No. 3	Accused No. 5	Petitioner No. 2
6.	Amitabh Gupta	Director of Accused No. 3	Accused No. 6	Petitioner No. 3
7.	M/s. Malwa Vanaspati and Chemical Co. Ltd.	Mfg. Co.	Accused No. 7	Respondent No. 5
8.	Radhey Shyam Sharma	Nominee of Accused No. 7	Accused No. 8	Respondent No. 6

3. It was inter-alia alleged in the complaint that since the sample in question was misbranded, the accused persons have violated the provisions of Section 2 (ix) (e) (g) of the PFA Act read with Rule 37-D of the PFA Rules and therefore were liable to be convicted under Section 7 read with Section 16 of the PFA Act.

4. Factual allegations made in the complaint against the petitioners are in para 3 of the complaint which reads as under :-

> " The vendor has purchased the sampled commodity from M/s Goyal Brothers, N-61 A, Laxmi Nagar, Delhi-92. M/s Goyal Brothers, is a proprietorship concern and Sh. Vinod Goyal s/o Sh. Girdhari Lal is the proprietor of the said firm. M/s Goyal

> Brothers has purchased the sampled commodity from M/s Cargill India Ltd., A-53, Okhla Industrial Area, Phase-II New Delhi-20. M/s Cargill India Ltd. are the Marketier of the sampled commodity and is Limited Company consisting of three directors namely Sh Hardeep Singh s/o late Sh.Brig Ajit Singh (2) Sh. Sidhant Khosla s/o Sh. Maharaj Krishan Khosla and (3) Sh. Amitabh Gupta s/o Sh. K.C. Gupta. No nominee has been appointed by the company hence all the three directors as well as the firm are liable."

5. On a prima facie consideration of the complaint and documents filed along with the complaint, the learned Metropolitan Magistrate summoned the accused persons to face trial for an offence under Section 7 read with Section 16 of the PFA Act.

6. During hearing of the instant petition, the learned counsel for the petitioners submitted that the report of the public analyst do not show as to how the public analyst had come to the conclusion that the sampled commodity was misbranded.

7. The statements on the label of the sampled commodity are as under :-

(i) Is good to your heart.

(ii) Helps to lower risks of heart disease and may even prevent cancer.

8. The report of the public analyst records that the afore-noted statements are violative of provisions of Section 2(ix)(e)(g) of PFA Act and Rule 37-D of PFA Rules.

9. To appreciate the contention advanced by the learned counsel for the petitioners, it is necessary to analyze afore-noted statements in the light of Section 2(ix)(e)(g) and Rule 37-D.

10. Section 2(ix)(e) and (g) reads as under :-

> " (ix) "misbranded"- an article of food shall be deemed to be misbranded-
>
> x x x x x
>
> (e) if false claims are made for it upon the label or otherwise."
>
> x x x x x
>
> (g) if package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances containing therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents;"

11. Rule 37-D of the PFA Rules reads as under :-

> "**Labelling of edible oils and fats –** The package, label or the advertisement of edible oils and fats shall not use the expressions "Super-Refined", "Extra-Refined"' "Micro-Refined", "Double-Refined", "Ultra-Refined", "Anti-Cholesterol", "Cholesterol Fighter", "Soothing to Heart", "Cholesterol Friendly", "Saturated Fat Free" or *such other expressions which are an exaggeration of the quality of the Product*."

12. What is meant by expression " *such other expressions which are an exaggeration of the quality of the Product"?*

13. In the decision reported as *M/s Grasim Industries Ltd v Collector of Customs, Bombay* AIR 2002 SC 1706, the doctrine of 'esjudem generis' was explained as under :-

> "11. In the background of what has been urged by

the assessee it has to be further seen whether the principles of ejusdem generis have application. The rule is applicable when particular words pertaining to a class, category or genus are followed by general words. In such a case the general words are construed as limited to things of the same kind as those specified. The rule reflects an attempt to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. The rule applies only when (1) the statute enumerates the specific words, (2) the subjects of enumeration constitute a class or category, (3) that class or category is not exhausted by the enumeration, (4) the general terms follow the enumeration and (5) there is no indication of a different legislative intent. If the subjects of enumeration belong to a broad based genus, as also to a narrower genus there is no principle that the general words should be confined to the narrower genus. In interpreting Section 30 of the United Towns Electrical Company Act, 1902 which reads: "the company shall be liable for water rates on all lands and buildings, owned by it in the aforesaid town, but otherwise shall be exempted from taxation", the Privy Council rejected the contention that the word "taxation" should be considered ejusdem generis with "water rate". It was held that there is no room for application of the principle in the absence of any mention of a genus, since the mention of a single species for example of water rates does not constitute a genus. [See: United Towns Electric Co. Ltd. vs. A.G. for Newfoundland 1939 (1) ALL ER 423 PC]. The rule cannot be applied unless there is genus constituted or a category disclosed. If the preceding words do not constitute mere specifications of a genus but constitute description of a complete genus, the rule has no application. The rule has to be applied with care and caution. This is not an inviolable rule of law, but it is only permissible inference, in the absence of any indication to the contrary. Where the context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import it becomes the duty of the Courts to give those words their plain and ordinary meaning.

Following enunciation in Craies on Statute Law (Seventh Edition) at page 181 succinctly states the principle.

> "The modern tendency of the law, it was said, [by Asquith J in Allen v. Emmerson (1944) KB 362)] is " to attenuate the application of the rule of ejusdem generis." To invoke the application of the ejusdem generis rule there must be a distinct genus category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply, (Hood-Barrs v. IRC (1946) 2 All ER 768) but the mention of a single species does not constitute a genus. (Per Lord Thankerton in United Towns Electric Co. Ltd. v. Att. General for Newfoundland (1939) 1 All ER 423). "Unless you can find a category," said Farwell L.J., (in Tillmans and Co. v. S.S. Knutsford (1908) 2 KB 385) "there is no room for the application of the ejusdem generis doctrine," and where the words are clearly wide in their meaning they ought not to be qualified on the ground of their association with other words. For instance, where a local Act required that "theatres and other places of public entertainment" should be licensed, the question arose whether a "fun-fair" for which no fee was charged for admission was within the Act. It was held to be so, and that the ejusdem generis rule did not apply to confine the words "other places" to places of the same kind as theatres. So the insertion of such words as " or things of whatever description" would exclude the rule. (Attorney General v. Leicester Corporation (1910) 2 Ch. 359). In N.A.L.G.O. v. Bolton Corpn. (1943) AC 166) Lord Simon L.C. referred to a definition of "workman" as any person who has entered into a works under a contract with an employer whether the contract be by way of manual labour,

> clerical work "or otherwise" and said: "The use of the words 'or otherwise' does not bring into play the ejusdem generis principle: for 'manual labour' and 'clerical work' do not belong to a single limited genus" and Lord Wright in the same case said: "The ejusdem generis rule is often useful or convenient, but it is merely a rule of construction, not a rule of law. In the present case it is entirely inapt. It presupposes a 'genus' but here the only 'genus' is a contract with an employer".

14. Thus, the expression " *such other expressions which are an exaggeration of the quality of the product"* must take it's meaning and color from the preceding words occurring in Rule 37-D.

15. It is medically known that cholesterol has a direct link to the health of the heart. Excessive cholesterol block the arteries of the heart. Thus expressions which relate to the product and links the same to the health of the heart would prima facie come within the mischief of Rule 37-D.

16. It was then urged by the learned counsel for the petitioners with reference to the Rule 32 of the PFA Rules that the packing and labelling of food article is the responsibility of manufacturer of food article and therefore no offence can be alleged against present petitioners who are the directors of the company which markets the sampled commodity.

17. PFA Act fastens criminal liability on the vendor, distributor/marketer and manufacturer of a food article. Being directors of the company which markets the sample commodity, the petitioners are prima facie liable. However, the statute recognizes a defence available to an accused other than manufacturer to show that said accused purchased the commodity from a manufacturer. On proof thereof, said accused would earn an acquittal. The petitioners would thus have to establish at the trial that they purchased the sampled commodity from the accused no.7 company.

18. It was lastly urged by the learned counsel for the petitioners that it is settled law that the vicarious liability of a person for being prosecuted for an offence committed by the company arises only when there are specific and clear allegations/averments in the complaint that at the material time, such person was in-charge of and responsible to the company for conduct of business of the company or that the offence was committed with the consent or connivance of such person or attributable to neglect on his part. Learned counsel submitted that the complaint is totally silent in this regard and in the absence of such averments in the complaint and without adding or subtracting anything in the complaint, no offence is made out against the petitioners. Learned counsel further submitted that the Magistrate failed to appreciate that the petitioners are made accused solely because they happened to be the directors of the company at the relevant time. Counsel

relied upon the under-noted judgments in support of his contention.

S. No.	Judgment	Citation	Statute
1.	*SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr.*	2005 (7) SCALE 397	NI Act
2.	*KPG Nair Vs. Jindal Manthole India Ltd.*	(2001) 10 SCC 218	NI Act
3.	*MCD Vs. Ramkrishan Rohtagi*	AIR 1983 SC 67	PFA Act
4.	*MCD Vs. Purshottam Dass Jhunjhunwala & Ors.*	AIR 1983 SC 158	PFA Act
5.	*Smt. Manibai & Anr. Vs. State of Maharashtra*	AIR 1974 SC 434	PFA Act
6.	*State of Karnataka Vs. Pratap Chandra & Ors.*	AIR 1981 SC 872	DC Act
7.	*R.Banerjee & Ors. Vs. HD Dubey & Ors.*	AIR 1992 SC 1168	PFA Act
8.	*State of Haryana Vs. Brij Lal Mittal*	AIR 1998 SC 2327	DC Act
9.	*Panna Lal Sunder Lal Choksi Vs. State of Maharashtra*	2000 Crl. LJ 4442	PFA Act
10.	*Managing Director, IPC Agrotech Vs. Sh. Purnachandra Mishra & Anr.*	2002 (1) OLR 285	PFA Act DC Act
11.	*Umesh Sharma Vs. S.G.Bhagta*	2002 Crl. LJ 4843	DC Act
12.	*Iqbal Vs. State of Maharashtra*	2002 (1) FAC 321	PFA Act
13.	*Govinda Rao Vs. Food Inspector*	2003 Crl. LJ 1796	PFA Act
14.	*Mukesh Aggarwal Vs. State & Anr.*	94 (2001) DLT 374	NI Act
15.	*Preeti Bhoj Nagarwala Vs. State of Gujarat and Anr.*	(2002) 1 GLR 293	NI Act

19. Learned counsel for the State contended that not only the complaint, but material made available along with the complaint have also to be taken into consideration to find out whether prima facie case is made out against the persons arrayed as accused in the complaint. He further contended that when the documents accompanying the complaint show that the persons named as directors of a company are responsible for the business of the company and are incharge of the affairs of a company it is sufficient material for the magistrate to take cognizance of the offence against said persons.

20. Relevant part of Section 17 of the PFA Act reads as under:-

> "**Offences by companies -**
> (1) Where an offence under this Act has been committed by a company -
>
> (a) (i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereafter in this section referred to as the person responsible), or
>
> (ii) where no person has been so nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and
>
> • (b) the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he prove that the

offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Any company may, by order in writing, authorise any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated.

x x x x

(4) Notwithstanding anything contained in the foregoing sub-sections, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company [not being a person nominated under sub-section (2) such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

x x x x ”

21. Under the scheme of Section 17 of the PFA Act, there are three categories of individuals, who can be proceeded against and punished for an offence committed by the company. They are :-

(i) persons nominated by the company.

(ii) persons in-charge of and responsible to the company for conduct of business of company.

(iii) any director or other official of the company.

22. Section 17(1)(a)(i) is a deeming provision which stipulates that when the offence is committed by the company, the person who is nominated under Sub Section 2 of Section 17 shall be deemed to be a person in-charge of and responsible to the company for conduct of business of the company and can be proceeded against and punished accordingly.

23. However, in the absence of any nomination by the company, every person, who at the time of commission of offence was in-charge and was responsible to the company for conduct of business of the company can be proceeded against and punished accordingly for an offence committed by the company. [Section 17(1)(a)(ii)]

24. Even when there is a nomination, and it is yet proved that the offence has been committed with the consent, connivance or neglect on the part of any director, manager, secretary or other official of the company, such director, manager, secretary or other official shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished. [Section 17 (4)]

25. In the decision reported as *Municipal Corporation of Delhi v Ram Kishan Rohtagi* AIR 1983 SC 67 the Supreme Court was considering a complaint filed against the persons who

were Manager and Directors of the company under Sections 7 and 16 of the PFA Act. It was observed :-

> "It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code."

26. In the light of the decision of the Supreme Court in *Ram Kishan*'s case (supra), the order summoning the accused has to be tested in the light of the material before the learned Metropolitan Magistrate when he summoned the petitioners. I may note that the company has not made any nomination under Section 17.

27. The Memorandum and Articles of Association of accused no.3 company was filed along with the complaint. Clause 19 and 20 thereof read as under:-

> "19. The business of the Company shall be managed by the Directors who may pay all expenses incurred in setting up and registering the Company and may exercise all such powers of the Company as are not restricted by the act or any statutory modification thereof for the time being in force or by these Articles required to be exercised by the Company in general meeting subject nevertheless, to any regulations of these Articles, to the provisions of the Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the Company in general meeting. Noting shall validate any prior act of the Directors, which would have been

valid, if that regulation had not been made."

"20. The following persons are the Directors of the Company on the date of adoption of these Articles :-
1. Mr. Hardeep Singh
2. Mr. Amitabh Gupta
3. Mr. Sidhant Khosla"

28. The afore-noted clauses clearly shows that the petitioners were in-charge of and responsible for the conduct of business of accused no. 3 company.

29. In the decision reported as *Drugs Inspector, Palace Road, Bangalore v Dr. B.K. Krishnaiah & Anr* AIR 1981 SC 1164 a complaint was filed against the respondent who were partners of a firm for prosecution for offences under Section (18)(a)(vi) of the Drugs and Cosmetics Act, 1940. The High Court quashed the complaint on the ground that there were no allegations in the complaint that the "respondents were, in any manner, in-charge of and responsible to the firm for conduct of the business of the firm." Noting that a partnership deed showing the constitution of the firm was filed along with the complaint, the Supreme Court reversed the decision of the High Court observing as under :-

"6. The only question for consideration for the High Court in this case was whether the accused or any of them were liable. In paragraph 17 of the complaint petition the complainant quoted the provisions of the Act. In addition, he cited the names of witnesses, submitted a list of documents including a copy of the partnership deed at item No. 13 of the list of the

> documents. The learned Magistrate perused the partnership deed and prima facie found that the respondents as well as the deceased accused were liable for the offence and proceeded for trial. The learned High Court committed an error in holding that there was no allegation that the respondents were not responsible for the management and conduct of the firm The extent of their liability would be established by evidence during trial. In our opinion the judgment of the learned High Court is erroneous and is liable to be set aside."

30. In view of above discussion, no ground for quashing the present complaint and summoning order dated 27.8.03 is made out.

31. Keeping in view the fact that the petitioners are not manufacturers but marketers of the sampled commodity, they are granted exemption from personally appearing before the learned Metropolitan Magistrate provided petitioners enter appearance through a counsel. However, the learned Metropolitan Magistrate shall be within his right to enforce the attendance of the petitioners on a particular date when deemed necessary.

32. The petition is dismissed.

33. No costs.

October 9, 2007 PRADEEP NANDRAJOG, J.
MM/SL